

SERVICE DATE - LATE RELEASE MARCH 15, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34040

RIVERVIEW TRENTON RAILROAD COMPANY  
– PETITION FOR AN EXEMPTION FROM 49 U.S.C. 10901 –  
TO ACQUIRE AND OPERATE A RAIL LINE IN WAYNE COUNTY, MI

(MOTION FOR A PROTECTIVE ORDER)  
(MOTION FOR EXTENSION)

Decided: March 15, 2002

By motion filed on March 7, 2002, under 49 CFR 1104.14, Riverview Trenton Railroad Company (RTR) requests that the Board enter an order protecting the identity of the parties filing statements in support of its petition in this proceeding. The statements at issue appear in a simultaneously filed separate document marked “HIGHLY CONFIDENTIAL.”<sup>1</sup> According to RTR, this proceeding is politically charged, and public disclosure of the identities of supporting parties could thus damage their business interests by exposing them to retaliation from local opponents and opponent Grand Trunk Western Railroad Incorporated (GTW). RTR maintains that confidentiality would not harm opposing parties because their counsel would have full access to the information.

On March 12, 2002, the County of Wayne and GTW (Wayne County/GTW), jointly filed a reply in opposition to RTR’s motion for a protective order. These parties argue that there is no agency precedent supporting the confidentiality of statements submitted by supporting parties, especially where, as here, the statements contain no traffic data, confidential contract terms, or other commercial information.<sup>2</sup> According to Wayne County/GTW, allegations of retribution against supporting parties are unfounded speculation. These parties submit an alternate, allegedly “more common form of order” that would cover confidential material (not just highly confidential material) and would not treat the statements at issue as correctly characterized as highly confidential.

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<sup>1</sup> See Highly Confidential Exhibit No. 1 to Verified Statement of Mr. Arnold M. Mistura Submitted as Part of Response of Riverview Trenton Railroad Company to February 15 Request to Supplement Record, filed on March 7, 2002. Attached to RTR’s motion is a draft protective order.

<sup>2</sup> Wayne County/GTW assert that counsel has seen the statements, having signed RTR’s proposed confidentiality agreement under protest in order to obtain access to them for the purpose of opposing RTR’s motion.

On March 13, 2002, Wayne County/GTW filed (1) a supplemental statement bearing on the request for a protective order and (2) a separate motion for an extension of time to file their reply statement, from March 18, 2002, until 11 days after the Board rules on RTR's motion for a protective order. In their supplemental statement, Wayne County/GTW further attempt to explain why the supporting statements do not merit confidential status. They argue that the letters are "garden variety support letters of the type regularly submitted in Board proceedings," giving no indication on their face that the writers expected confidentiality. On March 14, 2002, RTR responded in support of its request for a protective order. As to the extension request, RTR indicates that it does not oppose an extension until March 21, 2002, for both RTR and its opponents to file relies that are currently due on March 18, 2002.

The request for a protective order will be denied. As argued by Wayne County/GTW, the statements are merely garden variety support letters of the type regularly submitted in Board proceedings, giving no indication on their face that the writers expected confidentiality. RTR cites no agency precedent for protecting the confidentiality of supporting statements that do not contain private commercial or operational information. While this proceeding has been contentious, RTR's fear of retaliation against its supporters is unsubstantiated and clearly does not warrant the unusual action of shielding from the public the identities of those in support of a proposal in an on-the-record proceeding before this agency.

In view of the denial of RTR's motion for a protective order, the alternative protective order proposed by Wayne County/GTW will not be approved.

The extension requested by Wayne County/GTW will be granted in part so that replies from all parties will be due on March 21, 2002. RTR does not object to an extension of that length and no further extension has been justified. Counsel for Wayne County/GTW has seen the statements, having signed RTR's proposed protective agreement under protest. By counsel's own admission, the statements contain no technical information that would require extended analysis by RTR's opponents.

It is ordered:

1. RTR's motion for a protective order is denied.
2. Wayne County/GTW's motion for an extension of time to file its reply is granted in part. Replies by all parties are due by March 21, 2002.

3. This decision is effective on its date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams  
Secretary